

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
Deputy Attorney General
4 State Bar No. 169207
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2564
6 Facsimile: (213) 897-2804
E-mail: Gillian.Friedman@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
LUZ CASIL DELAPENA aka
13 LUZ CASIL DELA PENA
1321 Lakeshore Circle
14 San Jose, CA 95131

Case No. *2013-398*

A C C U S A T I O N

15 Registered Nurse License No. 385077

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 31, 1985, the Board of Registered Nursing issued Registered
24 Nurse License Number 385077 to Luz Casil Delapena aka Luz Casil Dela Pena (Respondent).
25 The Registered Nurse License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on November 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

....

"(e) Making or giving any false statement or information in connection with the application for issuance of a certificate or license.

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by

1 a competent registered nurse. Such an extreme departure means the repeated failure to provide
2 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
3 situation which the nurse knew, or should have known, could have jeopardized the client's health
4 or life."

5 8. California Code of Regulations, title 16, section 1443, states:

6 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
7 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
8 exercised by a competent registered nurse as described in Section 1443.5."

9 9. California Code of Regulations, title 16, section 1443.5 states:

10 "A registered nurse shall be considered to be competent when he/she consistently
11 demonstrates the ability to transfer scientific knowledge from social, biological and physical
12 sciences in applying the nursing process, as follows:

13 "(1) Formulates a nursing diagnosis through observation of the client's physical condition
14 and behavior, and through interpretation of information obtained from the client and others,
15 including the health team.

16 "(2) Formulates a care plan, in collaboration with the client, which ensures that direct and
17 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and
18 for disease prevention and restorative measures.

19 "(3) Performs skills essential to the kind of nursing action to be taken, explains the health
20 treatment to the client and family and teaches the client and family how to care for the client's
21 health needs.

22 "(4) Delegates tasks to subordinates based on the legal scopes of practice of the
23 subordinates and on the preparation and capability needed in the tasks to be delegated, and
24 effectively supervises nursing care being given by subordinates.

25 "(5) Evaluates the effectiveness of the care plan through observation of the client's physical
26 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
27 communication with the client and health team members, and modifies the plan as needed.

"(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure To Disclose Substantially Related Conviction)

11. Respondent has subjected her license to disciplinary action under section 2761, subdivision (e) on the ground of unprofessional conduct in that in renewing her registered nursing license she failed to disclose that she was convicted of a crime substantially related to the duties, qualifications, and functions of a registered nurse in 1992. When Respondent was fingerprinted for her license renewal on December 7, 2010, her report showed that she had been convicted of felony grand theft. The facts and circumstances of the charges and conviction are as follows:

a. On or about October 15, 1992, in Santa Clara County Superior Court, Case No. C 9281279, Respondent was convicted by her guilty plea of violating Penal Code 487 (felony grand theft) in the matter *People of the State of California vs. Luz Casil Dela Pena* et al. Pursuant to the conviction, Respondent served nine (9) months in county jail and was placed on formal probation for five (5) years on terms and conditions that included restitution of \$229,236.00.

b. The factual circumstances underlying the charges are that between September 12, 1988 and July 31, 1990, Respondent, as the owner of Good Shepherd Health Care Services, engaged in Medi-Cal fraud involving the billing and dispensing of incontinence supplies and other durable medical equipment.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Conviction-Substantially Related Felony)**

3 12. Respondent has subjected her license to disciplinary action under section 2761,
4 subdivision (f) on the ground of unprofessional conduct in Respondent was convicted of a crime
5 substantially related to the duties, qualifications, and functions of a registered nurse in 1992 as set
6 forth more fully in paragraphs 11 a.-b. above.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Gross Negligence)**

9 13. Respondent has subjected her license to disciplinary action under section 2761,
10 subdivision (a)(1), on the ground of unprofessional conduct (gross negligence) in that on or about
11 June 24, 2009 and June 25, 2009, while employed as a registered nurse at the Kern Valley
12 Healthcare District (KVHD), in Lake Isabella, California, Respondent's conduct exhibited an
13 extreme departure from the standard of care where she failed to provide incontinence care for a
14 resident under her care and supervision. Respondent's repeated failure to provide nursing care as
15 required and/or failure to provide care or to exercise ordinary precaution in a single situation is
16 described more fully as follows:

17 a. On or about June 24, 2009 and June 25, 2009, Respondent failed to treat J.H. with
18 consideration and respect, and did not fully recognize his personal dignity by allowing him to lie
19 in a bed soaked with urine.

20 b. On or about June 24, 2009 and June 25, 2009, Respondent failed to provide toileting
21 to J.H., a long term care resident, who was incontinent and confused. Respondent should have
22 provided toileting opportunities for J.H. every two hours, where the resident was confused and
23 had periods of continence and incontinence. Failure to do so could have jeopardized J.H's health
24 as incontinence can result in skin breakdown.

25 c. On or about June 24, 2009 and June 25, 2009, Respondent failed to meet the standard
26 of care when she made the decision to allow J.H. to sleep all night rather than waking him up to
27 assist him to the bathroom so that he would not be incontinent in bed. Respondent failed to
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1 appropriately monitor and ensure safe care for this resident's skin. Respondent also failed to
2 delegate this task to another health care provider to ensure that it was accomplished

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Incompetence)**

5 14. Respondent has subjected her license to discipline under section 2761, subdivision
6 (a)(1), on the ground of incompetence, in that on or about June 24, 2009 and June 25, 2009, while
7 employed as a registered nurse at the Kern Valley Healthcare District (KVHD), in Lake Isabella,
8 California, Respondent failed to provide incontinence care for a resident under her care and
9 supervision. The facts and circumstances are set forth more fully in paragraph 13 a.-c. above.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct)**

12 15. Respondent has subjected his license to disciplinary action under section 2761,
13 subdivision (a), on the ground of general unprofessional conduct based on the conduct set forth in
14 paragraphs 13 a.- c. above.

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2 **PRAYER**

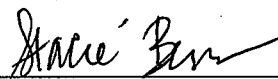
3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the Board of Registered Nursing issue a decision:

5 1. Revoking or suspending Registered Nurse License Number 385077, issued to Luz
6 Casil Delapena aka Luz Casil Dela Pena;

7 2. Ordering Luz Casil Delapena aka Luz Casil Dela Pena to pay the Board of Registered
8 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
9 Business and Professions Code section 125.3;

10 3. Taking such other and further action as deemed necessary and proper.
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12 DATED: NOVEMBER 15, 2012



13 *for* LOUISE R. BAILEY, M.ED., RN
14 Executive Officer
15 Board of Registered Nursing
16 Department of Consumer Affairs
17 State of California
18 *Complainant*

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